

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, September 30, 2020  
Place: Department B - Courtroom #13  
Fresno, California

**ALL APPEARANCES MUST BE TELEPHONIC**  
**(Please see the court's website for instructions.)**

*Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

**9:30 AM**

1. [19-10808](#)-B-13     **IN RE: MALER ATTAREB  
[MHM-2](#)**

MOTION TO DISMISS CASE  
9-2-2020    [\[46\]](#)

MICHAEL MEYER/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

The movant withdrew the motion on September 18, 2020. Doc. #52.  
Therefore, the matter will be dropped from calendar.

2. [20-12512](#)-B-13     **IN RE: CRYSTAL MENDOZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-3-2020    [\[25\]](#)

\$80.00 INSTALLMENT PAYMENT PAID 9/9/20

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    The OSC will be vacated.

ORDER:                            The court will issue an order.

The record shows that the installment fees now due were paid on  
September 9, 2020. Therefore, the Order to Show Cause will be  
vacated.

The order permitting the payment of filing fees in installments will  
be modified to provide that if future installments are not received  
by the due date, the case will be dismissed without further notice  
or hearing.

3. [17-12213](#)-B-13     **IN RE: RENE ELLER**  
[TCS-5](#)

MOTION TO MODIFY PLAN  
8-26-2020    [\[105\]](#)

RENE ELLER/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Denied without prejudice.

ORDER:             No appearance is necessary. The court will issue the order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Motion to Modify Plan was previously filed on July 23, 2020 (doc. #94) and is also set for hearing. The DCN for that motion was TCS-5. This motion was filed on August 26, 2020 (doc. #105) and also has a DCN of TCS-5 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

4. [17-12213](#)-B-13     **IN RE: RENE ELLER**  
[TCS-5](#)

CONTINUED MOTION TO MODIFY PLAN  
7-23-2020    [\[94\]](#)

RENE ELLER/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

The chapter 13 trustee filed an objection to the debtor's fully noticed motion to modify a chapter 13 plan. Doc. #103. The debtor elected to file a new, modified plan in lieu of filing a response to those objections. Doc. #105, 110. Although the new plan contains procedural inadequacies, discussed above, this motion will be DENIED AS MOOT.

5. [20-10314](#)-B-13     **IN RE: SERGIO MADRID AND ELIZABETH MAGANA**  
[UST-2](#)

MOTION TO COMPEL  
9-2-2020    [\[53\]](#)

TRACY DAVIS/MV  
MARK HANNON/ATTY. FOR DBT.  
JASON SHORTER/ATTY. FOR MV.  
DISMISSED 08/17/2020

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

This motion will be GRANTED. The court finds that the movant has made a good faith effort to attempt to confer with the Debtors in order to obtain the requested documents.

The United States Trustee ("UST") filed this motion to compel compliance with this court's previous order (doc. #32) for Rule 2004 Examination and production of documents to conduct her examination about the Debtors' payment of \$4,000.00 in attorney fees to Latino Law, Inc., and to inquire about the services provided by Latino Law, Inc. and Attorney Mark Hannon. Doc. #53.

On April 22, 2020, the UST sent a letter in English and Spanish to the Debtors with a copy to Mr. Hannon requesting documents be produced by May 25, 2020. Doc. #59, Ex. A. This letter requested the following documents:

1. Copies of all attorney-client agreements between the Debtors and Thomas Gillis, Mark Hannon, and Latino Law, Inc.;
2. Copies of all invoices received in connection with the Debtors' chapter 13 case;
3. Copies of questionnaires or other worksheets used to prepare and complete bankruptcy documents filed in Debtors' chapter 13 case;
4. Copies of receipts or other documents showing all payments made by or on behalf of Debtors to either Thomas Gillis, Mark Hannon, or Latino Law, Inc.;
5. Copies of correspondence between the Debtors and Thomas Gillis, Mark Hannon, or Latino Law, Inc.; and,
6. Produce the original, signed petition, schedules, statements, chapter 13 plan, and substitution of attorney by the Debtors.

Id.

After speaking with Mr. Hannon, the UST sent a letter by first class mail and email to Mr. Hannon on May 26, 2020, confirming that the Rule 2004 Examination had been scheduled for June 15, 2020 at 9:00 a.m. Id. at Ex. B. A reminder letter with all of Mr. Hannon's upcoming examinations with the Debtors and seven other clients was sent on June 12, 2020. Id. at Ex. C.

The UST states that the examination scheduled for June 15, 2020, did not proceed because the Debtors and Mr. Hannon failed to appear. Id. at Ex. D. Additionally, the Debtors and Mr. Hannon did not produce any of the documents requested in the 2004 Order. Id. A Court Reporter's Affidavit was prepared confirming that neither the Debtors nor Mr. Hannon had appeared, and the examination was continued to June 9, 2020, at 9:00 a.m. Id.

The UST sent another letter to Mr. Hannon on June 15, 2020, confirming that the examination was rescheduled for June 29, 2020. Id. at Ex. E. Mr. Hannon sent a reply via facsimile on June 16, 2020, which, in part, stated: "I object to everyone of these Rule 2002 [sic] Examinations you want to schedule . . . This is abusive and I refuse to cooperate with an abuse of the judicial process. All of these debtors signed under penalty of perjury how much money they gave to Tom Gillis and you do not need to exam [sic] them for a full day each how much money they gave to Tom Gillis. I will instruct these clients not to participate." Id. at Ex. F.

The rescheduled examination set for June 29, 2020, did not proceed because the Debtors and Mr. Hannon did not appear. Id. at Ex. G. The examination was rescheduled again for August 3, 2020, at 9:00 a.m. Another letter was mailed and emailed on June 29, 2020, to Mr. Hannon and the Debtors to confirm the date of the rescheduled hearing. Id. at Ex. H.

Mr. Hannon sent two email communications in reply to the UST, (1) requesting that all eight examinations be set for the same day; (2) Attorney Mark O'Toole will be appearing for the debtors at the examinations; and (3) Mr. Hannon will not be able to produce documents "due to the covi virus [sic] and the difficulty in getting clients to cooperate." Id. at Ex. I, J.

On July 3, 2020, the UST responded to Mr. Hannon and stated her position that (1) the UST is willing to set new dates and requested those dates be provided not later than July 8, 2020; (2) Mr. O'Toole has not appeared on behalf of the Debtors and because Mr. Hannon is the attorney of record in the Debtors' case, the examination would not proceed without his attendance; (3) the document production should not be delayed, but if documents are not produced, a reason should be provided; and (4) if the Debtors fail to appear at the rescheduled date, the UST would seek a motion compelling compliance with the 2004 Order. Id. at Ex. K.

On July 16, 2020, Mr. Gillis informed the UST that Mr. Hannon would not cooperate with the UST to set agreeable dates to conduct the 2004 examination. Doc. #56. The UST sent another letter stating that the rescheduled 2004 examination would be held on August 3, the previously agreed upon date. Doc. #59, Ex. L. On July 24, 2020,

Mr. Gillis informed the UST that Mr. Hannon and the Debtors would not attend the rescheduled examination on August 3. Id. at Ex. M. The August 3 examination did not proceed because Mr. Hannon and the Debtors did not appear.

Mr. Hannon filed a limited opposition to this motion admitting that the examinees must appear for the examination and produce documents. Doc. #62. Mr. Hannon suggests that the production of documents cannot be completed until his office reopens due to the Governor of California's order closing non-essential businesses. Id. The UST correctly states that Mr. Hannon did not provide any evidence that his law office has been closed as a non-essential business. Mr. Hannon appears to have continued filing notices and responses in this case. See docs. #46, 62. Additionally, Mr. Hannon appears to have filed responses, amended schedules, and made appearances in other cases. See e.g., In re Mendez, Case No. 19-14377 (Bankr. E.D. Cal.), docs. #81, 83, 85, 121. This seems to suggest that Mr. Hannon's office is still open and that he is still providing legal services to his clients.

The Debtors and Mr. Hannon have not demonstrated that their repeated failure to abide by the 2004 Order is justified or excusable. The Debtors and Mr. Hannon have known for over three months that they would be required to appear and produce documents. Despite the scheduling of three separate examinations, the Debtors and Mr. Hannon have not produced any documents or taken any reasonable steps within their power to comply with the 2004 Order or provide a satisfactory explanation for failure to appear and produce documents; or why the documents cannot be produced. Mr. Hannon has been sent multiple communications from the UST, including letters, emails, and phone calls.

The Rule 2004 Examination is a basic discovery device in bankruptcy cases. In re Subpoena Duces Tecum, 461 B.R. 823, 829 (Bankr. C.D. Cal. 2011). It allows broad examination relating to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). The scope of the examination is "unfettered and broad"; the rule essentially permits a "fishing expedition." In re Subpoena Duces Tecum, 461 B.R. at 829 (quoting In re GHR Energy Corp., 33 B.R. 451, 453-54 (Bankr. D. Mass. 1983)). The examination may "extend to third parties who have had dealings with the debtor." In re Fin. Corp. of America, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990).

The debtor "shall attend and submit to an examination at the times ordered by the court." Fed. R. Bankr. P. 4002(a)(1). Under Rule 2004(d), the court "for cause shown and on terms as it may impose" may order a debtor to be examined "under this rule" at any time or place which the Court may designate. Fed. R. Bankr. P. 2004(d); In re Lebbos, 2007 Bankr. LEXIS 3372 at \*28-30 (E.D. Cal. Sept. 24, 2007).

It will therefore be ordered that the debtors shall comply with the UST's request for production of documents not later than Friday,

October 9, 2020 at 5:00 p.m. The Debtors shall send these documents via email in Adobe .pdf format to Patti.Vargas@usdoj.gov. The response shall not include objections since the Debtors and Mr. Hannon waived that right by failing to timely respond or request an extension. Additionally, the Debtors and Mr. Hannon shall appear at the rescheduled 2004 examination either telephonically or using a mutually acceptable virtual electronic platform, under oath, and before a court reporter on Friday, October 16, 2020 at 9:00 a.m.

If Mr. Hannon and the Debtors do not comply with the order, then the UST may file motion(s) for further relief.

6. [20-12716](#)-B-13     **IN RE: DANIEL/IVY ROCHA**  
[LW-1](#)

MOTION TO VALUE COLLATERAL OF BENEFICIAL STATE BANK  
8-31-2020     [\[13\]](#)

DANIEL ROCHA/MV  
JAMIL WHITE/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. 11 U.S.C. § 1325(a)(\*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Debtors ask the court for an order valuing a 2011 Chevrolet Camaro LT ("Vehicle") at \$8,892.00. Doc. #13. The Vehicle is encumbered by a purchase-money security interest in favor of creditor Beneficial State Bank ("Creditor"). Debtors purchased the Vehicle on July 17, 2017, which is more than 910 days preceding the petition filing date. Debtors' declaration states that the Vehicle was acquired for debtors' personal use. The elements of § 1325(a)(\*) are not met and § 506 is applicable.

Debtors' declaration states the replacement value of the Vehicle is \$8,892.00. Doc. #15. Creditor's claim states the amount owed to be \$9,392.75. Claim #7-1.

The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at \$8,892.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

7. [20-12716](#)-B-13     **IN RE: DANIEL/IVY ROCHA**  
[LW-2](#)

MOTION TO VALUE COLLATERAL OF FAST AUTO LOANS, INC.  
8-31-2020     [\[19\]](#)

DANIEL ROCHA/MV  
JAMIL WHITE/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the



hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. 11 U.S.C. § 1325(a)(\*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Debtors ask the court for an order valuing a 1998 GMC Sierra 1500 ("Vehicle") at \$2,425.00. Doc. #19. The Vehicle is encumbered by a purchase-money security interest in favor of creditor Fast Auto Loans, Inc. ("Creditor"). Debtors purchased the Vehicle on May 31, 2016, which is more than 910 days preceding the petition filing date. Debtors' declaration states that the Vehicle was acquired for debtors' personal use. Doc. #21. The elements of § 1325(a)(\*) are not met and § 506 is applicable.

Debtors' declaration states the replacement value of the Vehicle is \$2,425.00. Doc. #21. Debtor's schedules indicate that the amount owed to be \$12,089.75. Doc. #22, Schedule D. Creditor does not appear to have filed a claim.

The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at \$2,425.00. The proposed order shall specifically identify the collateral, and if applicable, the proof

of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

8. [19-13822](#)-B-13     **IN RE: SALVADOR PULIDO**  
[TCS-1](#)

MOTION TO MODIFY PLAN  
8-25-2020    [\[40\]](#)

SALVADOR PULIDO/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING WITHDRAWN

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The chapter 13 trustee withdrew his opposition. Doc. #52. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

9. [20-11229](#)-B-13     **IN RE: THERON/BARBARA REDFEARN**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
5-15-2020    [\[22\]](#)

MICHAEL MEYER/MV  
MICHAEL REID/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

ORDER:                         The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion will be GRANTED. This matter has been continued several times. The grounds of the motion are that there is unreasonable delay that is prejudicial to creditors due to their failure to make all payments due under the plan and for failure to set a plan for hearing with notice to creditors. Doc. #22. The matter was continued to this calendar to be heard in conjunction with debtors' motion to confirm a chapter 13 plan, WLG-2, matter #10 below.

That motion is tentatively denied without prejudice unless debtors are current on plan payments by the hearing date.

If debtors' motion to confirm a plan is denied, then this motion will be granted. If the debtors' motion to confirm a plan is granted, then this motion will be denied.

10. [20-11229](#)-B-13     **IN RE: THERON/BARBARA REDFEARN**  
[WLG-2](#)

MOTION TO CONFIRM PLAN  
8-26-2020    [\[53\]](#)

THERON REDFEARN/MV  
MICHAEL REID/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Denied without prejudice.

ORDER:                         The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition

at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Therefore, the defaults of the above-mentioned parties in interest, except for the chapter 13 trustee, are entered.

This motion will be DENIED WITHOUT PREJUDICE. The chapter 13 trustee ("Trustee") opposes confirmation solely because debtors' plan payments are delinquent in the amount of \$7,278.00 through August 2020 and the September plan payment of \$2,640.00 will come due before this hearing. Doc. #60.

Unless debtors are current at the hearing, the court intends to deny the motion. If debtors are current, then the motion will be granted.

11. [20-10858](#)-B-13      **IN RE: CHRISTOPHER/TRACEY PRESS**  
[TCS-2](#)

MOTION TO MODIFY PLAN  
8-24-2020    [\[44\]](#)

CHRISTOPHER PRESS/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Granted.

ORDER:              The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

12. [17-11570](#)-B-13     **IN RE: GREGGORY KIRKPATRICK**  
[MHG-6](#)

CONTINUED MOTION TO MODIFY PLAN  
7-2-2020    [\[212\]](#)

GREGGORY KIRKPATRICK/MV  
MARTIN GAMULIN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

This motion will be DENIED AS MOOT. Debtors filed an amended plan.  
MHG-7.

13. [18-10283](#)-B-13     **IN RE: FRANK/ROSALINDA BRUM**  
[PBB-2](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE  
SECTION 1328 CERTIFICATE REQUIREMENT, AND APPOINTMENT OF  
ROSALINDA BRUM AS REPRESENTATIVE OF THE ESTATE OF FRANK WILLIAM  
BRUM  
9-1-2020    [\[40\]](#)

ROSALINDA BRUM/MV  
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by  
Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the  
creditors, the debtor, the U.S. Trustee, or any other party in  
interest to file written opposition at least 14 days prior to the  
hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of  
any opposition to the granting of the motion. Cf. Ghazali v. Moran,  
46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not  
materially alter the relief requested by the moving party, an actual  
hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d  
592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned  
parties in interest are entered and the matter will be resolved  
without oral argument. Upon default, factual allegations will be  
taken as true (except those relating to amount of damages).  
Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir.  
1987). Constitutional due process requires that a plaintiff make a  
prima facie showing that they are entitled to the relief sought,  
which the movant has done here.

This motion will be GRANTED. Debtor's counsel asks the court to appoint Rosalinda Brum as representative of the estate of Frank William Brum ("Debtor"), waive the post-petition education requirement under 11 U.S.C. § 1328(f) for discharge for the estate of Debtor, and waive the certification requirements for entry of discharge in a chapter 13 case, to the extent that Rosalinda Brum ("Brum") can demonstrate an inability to provide such certifications. Doc. #40. Debtor passed away in 2019 and is therefore unable to complete the post-education requirement and the certification requirements

Federal Rule of Bankruptcy Procedure 1016 provides:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered, and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Federal Rule of Civil Procedure 25, made applicable by Federal Rule of Bankruptcy Procedure 7025 and 9014, allows the court to order substitution of the proper party.

Under 11 U.S.C. § 1328(g), the court cannot grant a discharge to a debtor in chapter 13 unless the debtor completes an instructional course concerning personal financial management, unless they are a person described in § 109(h)(4). Section 109(h)(4) excuses individuals "whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability. . . ."

No party has filed opposition to this motion. Therefore, in accordance with Fed. R. Bankr. P. 1016, Debtor is excused from completing and filing a certificate of completion of the financial management course and the post-petition education requirement. The clerk's office is to treat this case as it would if the debtor had filed a certificate of completion of the financial management course.

14. [20-11186](#)-B-13     **IN RE: JOSE RECILLAS**  
[TCS-1](#)

MOTION TO MODIFY PLAN  
8-25-2020    [\[20\]](#)

JOSE RECILLAS/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

15. [20-12691](#)-B-13     **IN RE: SAMUEL/ANA LOPEZ**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT  
CORPORATION  
9-10-2020    [\[18\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
ANH NGUYEN/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained in part and overruled in part.

ORDER:                            The minutes of the hearing will be the court's  
findings and conclusions. The Moving Party  
will submit a proposed order after hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults, sustain the objection in part, and overrule the objection in part. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Creditor Toyota Motor Credit Corporation ("Creditor") objects to plan confirmation because the debtors' proposed plan places Creditor's claim in Class 2A, yet a motion to value property under 11 U.S.C. § 506(a) has not been filed, and even if were filed, it would not succeed. Doc. #18. Creditor also opposes because the plan proposes to pay an unreasonably low interest rate of 3.25%, which is less than the guidelines provided in Till v. SCS Credit Corp., 124 S. Ct. 1951 (2004), and the plan is not feasible. Id.

In Till, the Supreme Court determined that the appropriate interest rate for a secured claim should be determined by the 'formula approach,' which requires the court to take the national prime interest rate and adjust it to compensate for an increased risk of default. Till, 124 S. Ct. at 1957. Such factors include (1) circumstances of the estate, (2) the nature of the security, and (3) duration and feasibility of the reorganization plan. Id. at 1960.

Here, the estate consists of approximately \$97,405.00 in assets and \$172,821.00 in liabilities. Doc. #15. The Debtors' income is approximately \$9,277.00 per month with \$7,320.00 in monthly expenses. Id. The property securing Creditor's claim is a 2020 Toyota Prius Prime valued at \$20,000.00 and owing \$35,746.00. Id., Schedule D at ¶ 2.3. The original loan, which was incurred on November 14, 2019, had a fixed interest rate of 7.99%. Doc. #20; Claim #5-1. The proposed chapter 13 plan consists of 60 monthly payments of \$1,957.00, with the duration of the plan lasting approximately five years. Doc. #16.



As of August 14, 2020, the national prime interest rate was 3.25%. Doc. #18. Creditor argues that increasing the interest rate to 6.25% is appropriate, which is less than the original 7.99% interest rate when the vehicle was purchased. This court agrees that an interest rate of 6.25% is reasonable after considering the circumstances of the estate, the nature of the security, and the duration and feasibility of the plan.

Sections 1.04 and 3.08(c) of the plan require separately served and filed motions to value collateral for claims classified in class 2, subject to certain exceptions. Doc. #16. Creditor's claim is in Class 2A, an exception to plan section 3.08(c), which claims are not reduced based on the value of collateral. Motions to value are not required on claims in class 2A. Therefore Creditor's objection will be OVERRULED on those grounds.

Unless opposition is presented at the hearing, the court is persuaded that Creditor has met its burden. The interest rate on Creditor's claim shall be changed to 6.25%.

This objection will be SUSTAINED IN PART and OVERRULED IN PART.

11:00 AM

1. [20-10501](#)-B-7     **IN RE: ANDRES BRAMBILA**  
[20-1031](#)

CONTINUED ORDER TO SHOW CAUSE  
7-17-2020    [[14](#)]

DANIEL V. BRAMBILA  
CASE DISMISSED 9/16/20

NO RULING.

2. [20-10501](#)-B-7     **IN RE: ANDRES BRAMBILA**  
[20-1031](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
5-14-2020    [[1](#)]

DANIEL V. BRAMBILA  
CHRISTOPHER SEYMOUR/ATTY. FOR PL.  
RESPONSIVE PLEADING. CASE DISMISSED 9/16/20

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

An order dismissing the case has already been entered on September 16, 2020. Doc. #28. Therefore, the matter will be dropped from calendar.

3. [08-17066](#)-B-13     **IN RE: JOE PARKS**  
[20-1039](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
6-24-2020    [[1](#)]

PARKS V. HSBC MORTGAGE SERVICES, INC. ET AL  
GABRIEL WADDELL/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

4. [18-13468](#)-B-7     **IN RE: MANUEL/LUPITA MENDOZA**  
[20-1032](#)     [RWR-2](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT  
9-1-2020     [\[42\]](#)

SALVEN V. MENDOZA ET AL  
RUSSELL REYNOLDS/ATTY. FOR MV.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. In accordance with Federal Rule of Civil Procedure 55 (made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055), default judgment will be entered against Defendants. Defendants' default was entered on July 20, 2020. Docs. #15, 17, 19, 21.

The Debtors initially filed for bankruptcy on August 24, 2018, and received their discharge on December 10, 2018. See In re Manuel Alvarado Mendoza and Lupita Castro Mendoza, Case No. 18-13468, docs. #1, 14. Unbeknownst to the Debtors, at the time of filing they jointly owned a one-quarter interest in a parcel of real property commonly known as 12625 West G Street, Biola, CA 93603 ("Biola Property"), acquired in 1994 after Rosalio Mendoza and Hortencia Mendoza deeded the Biola Property to their children, which included Debtor Manuel Alvarado Mendoza. Doc. #47.

After it was discovered that the Debtors owned an interest in the Biola Property, the case was reopened on July 19, 2019 and the schedules were amended to accurately reflect ownership of this asset. In re Mendoza, Case No. 18-13468 at docs. #19, 25.

The chapter 7 trustee ("Trustee") initiated this adversary proceeding to sell the co-owned property pursuant to 11 U.S.C. § 363(h) and Rule 7001(3) of the Federal Rules of Bankruptcy Procedure.

11 U.S.C. § 363(h) allows the trustee to sell both the estate's interest and the interest of any co-owner in property in which the debtor had an undivided interest as a joint tenant only if:

- (1) the partition in kind of such property among the estate and such co-owners is impracticable;
- (2) the sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interest of such co-owners;
- (3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and
- (4) such property is not used in the production, transmission, or distribution, for sale of electric energy or of natural or synthetic gas for heat, light, or power."

11 U.S.C. § 363(h).

Here, the Biola Property is a single-family residence on a single parcel of real property, so partition among co-owners is impractical. Doc. #45. The Debtors' amended schedules list the value of the property to be approximately \$172,000.00. In re Mendoza, Case No. 18-13468, doc. #25, Schedule A/B. The Debtor believes that one of the co-owner's children is currently living at the Biola Property, but she is not receiving any rent payments, nor had she received any rent payments prior to filing her petition. Doc. #46. Sale of the estate's undivided interest would realize significantly less for the estate than sale of the property free of the interest of co-owners because the Debtors owned the interest in the Biola Property as joint tenants with other co-owners. Additionally, the benefit of a sale of the property free of co-owners outweighs the detriment to co-owners because the property because the property is worth at least \$172,000.00 and there are no deeds of trust encumbering the property and there is no revenue being generated from the property. The Defendants have not expressed interest in purchasing the estate's interest in the property. A sale will generate cash for all owners allowing a distribution to the Debtor's creditors and allowing the Defendants to invest the cash however they wished. Prior to the proposed sale, all co-owners will be given a right of first refusal to purchase the property.

The trustee has established that the Biola Property is owned jointly between the estate and Defendants. Partition among co-owners is impractical, the sale of the estate's undivided interest would realize significantly less for the estate than sale of the property free of the interest of co-owners, the benefit to the estate of the sale of the Biola Property outweighs the detriment to co-owners, and the property is not used in the production, transmission, or distribution, for sale of electric energy or of natural or synthetic gas for heat, light, or power.

Therefore, the Trustee will be authorized to market and sell the estate's interest as well as the Defendants' interest with the sale terms and conditions subject to further court approval.

5. [18-13677](#)-B-9     **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
CALIFORNIA LOCAL HEALTH CARE DISTRICT  
[20-1046](#)**

STATUS CONFERENCE RE: COMPLAINT  
8-3-2020    [\[1\]](#)

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOC V.  
MICHAEL WILHELM/ATTY. FOR PL.

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

A notice of dismissal was filed on September 21, 2020. Doc. #7.  
Therefore, the matter will be dropped from calendar.

6. [18-13677](#)-B-9     **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
CALIFORNIA LOCAL HEALTH CARE DISTRICT  
[20-1047](#)**

STATUS CONFERENCE RE: COMPLAINT  
8-4-2020    [\[1\]](#)

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOC V.  
MICHAEL WILHELM/ATTY. FOR PL.

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Continued to October 28, 2020 at 11:00 am.

ORDER:                            The court will issue the order.

According to the Status Report (Doc. 7), this matter has settled and the plaintiff is awaiting the payment under the settlement. Plaintiff requested a one-month continuance. The court finds cause to continue the matter to October 28, 2020 at 11:00 am. Plaintiff shall promptly file a dismissal of this adversary proceeding when settlement terms are complete. If a dismissal is not filed by October 21, 2020, plaintiff shall file and serve a status report on that date.

7. [18-13677](#)-B-9     **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
CALIFORNIA LOCAL HEALTH CARE DISTRICT  
[20-1048](#)**

STATUS CONFERENCE RE: COMPLAINT  
8-4-2020    [\[1\]](#)

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOC V.  
MICHAEL WILHELM/ATTY. FOR PL.

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Continued to October 28, 2020 at 11:00 am.

ORDER:                            The court will issue the order.

The Status Report (Doc. 7) states the settlement agreement resolving this proceeding is about to be signed and the plaintiff is awaiting payment under the settlement. The court finds good cause to continue this matter to October 28, 2020 at 11:00 am. Plaintiff shall promptly file a dismissal of this adversary proceeding when settlement terms are complete. If a dismissal is not filed by October 21, 2020, plaintiff shall file and serve a status report on that date.

8. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT  
[19-1123](#)**

FURTHER STATUS CONFERENCE RE: AMENDED COMPLAINT  
12-19-2019    [\[11\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. MEDLINE  
MICHAEL WILHELM/ATTY. FOR PL.  
RESPONSIVE PLEADING

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Continued to December 2, 2020, at 11:00 a.m.

ORDER:                            The court will issue an order.

The parties submitted a joint status report (Doc. 38) and the court entered an order referring this matter to BDRP (Doc. 39). The parties reference the number of documents involved in this matter and Medline's corporate restrictions on its employees preventing free travel, at this time for the delay in prosecution of this matter. The matter will be continued so the BDRP process can proceed. Therefore, this matter will be continued to December 2, 2020 at 11:00 a.m.

9. [18-13468](#)-B-7     **IN RE: MANUEL/LUPITA MENDOZA**  
[20-1032](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
6-2-2020    [[1](#)]

SALVEN V. MENDOZA ET AL  
RUSSELL REYNOLDS/ATTY. FOR PL.

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        Dropped from calendar.

ORDER:                The court will issue an order.

A default judgment will be entered against the Defendants [RWR-2] in matter #4, above. The status conference will be dropped from calendar and may be reset by any party on 10 days' notice. The clerk of the court will close the adversary proceeding without notice in 60 days unless the adversary proceeding has been concluded or set for a further status conference within that time. Either party may request an extension of this time up to 30 days by ex parte application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will issue an order.